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**Human Services Committee
Public Hearing, March 1, 2022
Testimony submitted by Kevin Brophy, CT Legal Services**

**Re: Raised Bill No. 196, Act Prohibiting Discharges from
Nursing Homes and Residential Care Homes
To Temporary or Unstable Housing**

My name is Kevin Brophy. I am the Managing Attorney of the Elder Law Unit of Connecticut Legal Services, a non-profit legal aid agency. On behalf of my low-income elderly clients, who reside in nursing homes and residential care homes, and my sister legal aid organizations, I am submitting my testimony in support of Raised Bill No. 196, An Act Prohibiting Discharges from Nursing Homes and Residential Care Homes to Temporary or Unstable Housing.

Our state discharge statutes are found at Conn. Gen. Stat. §§ 19a-535 and 19a-535a. Under current state law, nursing homes and residential care homes are not prohibited from discharging residents to homeless shelters or to "temporary or unstable housing situation". During the pandemic in 2020, I had a client who lived in a nursing home with severe medical problems, including suffering from several strokes. He had been in the nursing home for approximately eight months and no longer had a home or apartment to go back to. In December 2019, he had lost his HUSKY D health insurance because he turned 65 and became eligible for Medicare, which did not cover the cost of his nursing home care. The nursing home tried to discharge him to a homeless shelter. Fortunately, Legal Services was able to stop the discharge and find him a private pro bono attorney who helped him get on HUSKY C, Long Term Care health insurance. Please see attached newspaper article written by Dan Haar titled, "*Stopping a nursing home ouster as coronavirus rages,*" dated April 4, 2020 in the Middletown Press.

In response to such stories, Governor Lamont issued Executive Order 7 XX, which suspended the involuntary discharge of residents from nursing homes and residential care homes to homeless shelters. While this order has expired, such a prohibition should become permanent and expanded so that nursing homes and residential care homes are prohibited from discharging residents to homeless shelters and to "temporary or unstable housing situation," such as hotels, motels or other similar lodging.

Nursing homes and residential care facilities must have adequate health care safeguards in place in the community, before discharging a resident. Sending residents of poor health to homeless shelters or other "temporary or unstable housing" is never an appropriate and safe discharge. To allow such discharges will increase the likelihood of these residents becoming hospitalized, ending up back in a nursing home, or even worse, dying. Please see attached article written by Jessica Silver-Greenberg and Amy Julia Harris, titled "*They Just Dumped Him Like Trash': Nursing Homes Evict Vulnerable Residents*," dated June 21, 2020 in the New York Times.

Part of the underlying problem is that nursing homes and residential care facilities lack adequate staffing. This was a key point made in the Mathematica report, which was an independent assessment ordered by Governor Lamont on the impact of COVID- 19 in the state's nursing homes. However, in 2021, the legislature increased the required number of social workers in nursing homes to one full-time social worker per 60 residents. See P.A. 21-185, Section 10. Social workers are the ones charged with developing a discharge plan and assisting a resident in finding a place to go. This increase in the number of social workers should help. Previously, many social workers were overwhelmed and lacked the time or resources to develop an appropriate plan for a safe discharge, which led to discharges to inappropriate places. Facility staff must be required to explore safe housing options for this vulnerable population.

Thank you for your time and interest.

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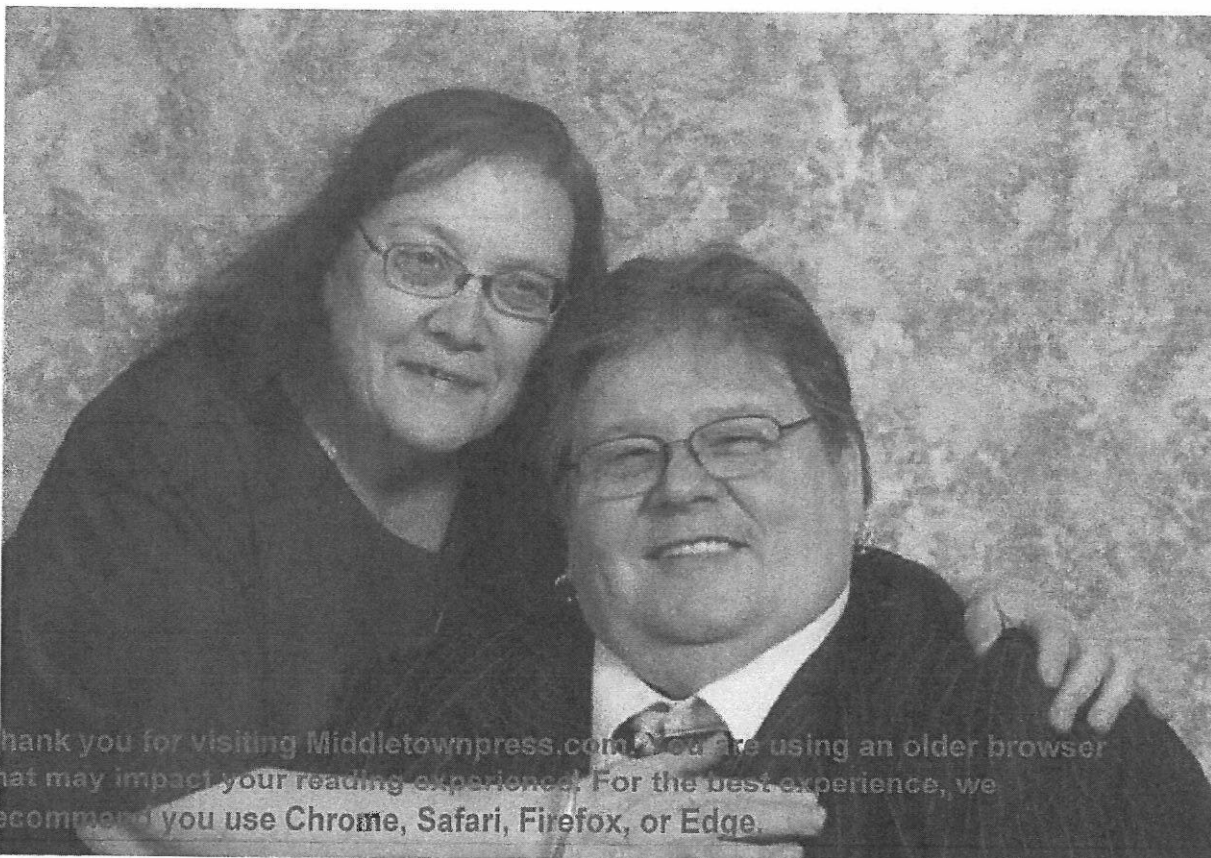
NEWS

Dan Haar: Stopping a nursing home ouster as coronavirus rages



Dan Haar

Updated: April 4, 2020 5:30 a.m.



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James Doyle and his wife, Kathleen Ann Bird, who died last year. Doyle is living in a Cheshire rehab center that's trying to force him out even amid the coronavirus crisis.
Courtesy of James Doyle

James Doyle had already fallen far by the time he fully understood the March 18 discharge document from the Cheshire Regional Rehab Center, his home for the last eight months.

This, he could not, would not, will not abide — certainly not during a global pandemic that has everyone locked down.

The document said he must leave the rehab center, though he had no place to go. It showed an address in Meriden where he was to move, forcibly if necessary, by April 17. Doyle, a former toolmaker who has suffered three strokes, didn't know what was at that location.

A lawyer confirmed it was Shelter Now, a homeless shelter in Meriden, though the street name was listed incorrectly.

"I said 'No, I will not go to a shelter,'" Doyle told me Friday, a couple of hours before the shelter closed to new residents. **Thank you for visiting Middletownpress.com. You are using an older browser the foray Group has a reading requirement for the 1,230 COVID-19 cases and recommend you use Chrome, Safari, Firefox, or Edge.**

warned of the impending surge. "I have too many medical needs. I can't walk, I can't take care of myself."

How did we arrive at a point where a 65-year-old disabled man in a nursing home faces eviction to a homeless shelter — at any time, let alone in the middle of the coronavirus crisis?

That's what James Doyle wants to know and he's scared. "I've been a good person all my life and I hear about the things that go on in a shelter," he said.

That's also what Kevin Brophy wants to know. As managing attorney in the elder law unit of Connecticut Legal Services, he sees a few of these discharges to homeless shelters a year — which is a few a year too many — and there may be more he's not seeing.

"During this pandemic we don't think nursing home involuntary discharges should be issued," he said.

At any time, there must be a better way. Even beyond the obvious moral concern, how long would James Doyle last in a shelter before they rushed him to a hospital?

'A useful person'

Until last spring, Doyle, a longtime Naugatuck resident, lived independently with his wife, Kathleen. Each cared for the other. She had cancer, he lived with a raft of health problems stemming from the strokes, a long-ago broken back,

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He sustained another stroke, cracked a hip, cycled in and out of a Waterbury hospital and rehab facility and landed, last summer, in Cheshire. The trouble started when he turned 65 in December — aging out of the Medicaid program known as HUSKY D for low-income adults.

He might qualify for Medicaid coverage for people over 65, but lacks the wherewithal to apply. "They sent me the paper work but I can't understand it and the social worker here says 'That's not my job,'" he lamented.

Doyle's inability frustrates him. As a young man, he told me, "I was research and development, I built machines for people...I made the first machine that made airbag canisters for cars."

Then around age 30, he crashed in a snowmobile. He broke his back, had multiple surgeries and never fully recovered. He worked in manufacturing as long as he could, then migrated to computer work at Bozzuto's Inc., the food wholesaler, and drove a pilot car for oversize highway loads until he couldn't work anymore.

"It's not like I wasn't a useful person," Doyle says. "I had a good mind, and now my mind is crap."

Through the phone, over the din of his roommate's TV, I hear the physical therapist arrive. "I actually managed to walk 24 steps the other day," Doyle says.

"I'm happy here but I owe this place, I think they said \$48,000. And it's getting higher every month."

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Notable timing

And so, without a source of payment for Doyle, after three months Cheshire Regional Rehab Center moved to throw him out. He appealed, and that automatically brought in the state's long-term care ombudsman's office, which, in turn, contacted Brophy's office.

The state Department of Social Services rejected that first involuntary discharge letter, saying it didn't meet the requirements of state statute, Brophy said. That was in early March. Then, as the nation started to shut down, Cheshire Regional Rehab issued Doyle the March 18 discharge letter.

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The timing of that is notable for two reasons. First, tenant eviction hearings aren't happening right now and mortgage foreclosures are on hold, yet there's no ban on involuntary nursing home discharges. "These folks are a lot more vulnerable basically than most tenants," said Sara Parker McKernan, policy advocate at New Haven Legal Assistance. "If anybody should be sheltered in place, it should them."

That day, March 18, happened to be the same day Lamont issued Executive Order No. 7F, which appears to say hearings at nursing homes need not take place in person. That could hamstring lawyers and violate due process rights, Parker McKernan argues.

Brophy and other Legal Aid lawyers sought clarification from Lamont's office on whether that order applies to discharge hearings. And they formally requested a temporary ban on all involuntary discharge orders, hearings and actual discharges.

Max Reiss, a spokesman for Lamont, said Friday the governor is looking closely at many ways to keep residents safe and healthy through new or modified orders.

Preparing for the worst

Here's what happened in Naugatuck when a different nursing home won a discharge case in March against another client of Brophy's. The home called the cops when the man refused to leave. Police from that town showed up, shook their heads and said no, sorry, we're not forcibly removing this resident in the coronavirus crisis.

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Doyle may not face a hearing because the Department of Social Services ruled that the March 18 order against him was defective, like the earlier one. A spokesman for the department did not respond late Friday so I couldn't ask whether the DSS would go through with such a hearing even if it could, and whether the department supports a hold on discharges.

Two administrators at the Cheshire Regional Rehab Center didn't respond to phone messages Friday. As an optimist, I'll assume they're hunkering down in the crisis with Doyle in place and won't try a third discharge order.

There's also a decent chance Brophy will find an outside lawyer to help Doyle qualify for Medicaid again.

Doyle, lacking the luxury of optimism, must prepare for the worst. He's looking for a place to live, which clearly isn't going well in a pandemic, with his low Social Security income and need for a lot of help. He has no children and, having grown up in foster care, isn't close to his brothers and his mother.

He left his car with his cousin. That could be a last resort if he's ordered to a shelter. "I will find a way to get out of here and I will go somewhere else. I just don't know."

I don't know either. But this can't be the best way to run a system for poor and disabled people nearing the end of a hard life.

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Written By
Dan Haar

'They Just Dumped Him Like Trash': Nursing Homes Evict Vulnerable Residents

Nursing homes across the country are kicking out old and disabled residents and sending them to homeless shelters and rundown motels.

By Jessica Silver-Greenberg and Amy Julia Harris

June 21, 2020, 3:00 a.m. ET

On a chilly afternoon in April, Los Angeles police found an old, disoriented man crumpled on a Koreatown sidewalk.

Several days earlier, RC Kendrick, an 88-year-old with dementia, was living at Lakeview Terrace, a nursing home with a history of regulatory problems. His family had placed him there to make sure he got round-the-clock care after his condition deteriorated and he began disappearing for days at a time.

But on April 6, the nursing home deposited Mr. Kendrick at an unregulated boardinghouse — without bothering to inform his family. Less than 24 hours later, Mr. Kendrick was wandering the city alone.

According to three Lakeview employees, Mr. Kendrick's ouster came as the nursing home was telling staff members to try to clear out less-profitable residents to make room for a new class of customers who would generate more revenue: patients with Covid-19.

A missing person report for RC Kendrick in January, shortly before his family sent him to Lakeview Terrace.
Los Angeles County Sheriff's Department

More than any other institution in America, nursing homes have come to symbolize the deadly destruction of the coronavirus crisis. More than 51,000 residents and employees of nursing homes and long-term care facilities have died, representing more than 40 percent of the total death toll in the United States.

But even as they have been ravaged, nursing homes have also been enlisted in the response to the outbreak. They are taking on coronavirus-stricken patients to ease the burden on overwhelmed hospitals — and, at times, to bolster their bottom lines.

A Lakeview official said the company's evictions were appropriate and weren't an attempt to free space for Covid-19 patients. But similar scenes are playing out at nursing homes nationwide. They are kicking out old and disabled residents — among the people most susceptible to the coronavirus — and shunting them into homeless shelters, rundown motels and other unsafe facilities, according to 22 watchdogs in 16 states, as well as dozens of elder-care lawyers, social workers and former nursing home executives.

Many of the evictions, known as involuntary discharges, appear to violate federal rules that require nursing homes to place

residents in safe locations and to provide them with at least 30 days' notice before forcing them to leave.

While the popular conception of nursing homes is of places where elderly people live, much of their business is caring for patients of all ages and income levels who are recovering from surgery or acute illnesses like strokes. Medicare often pays for short-term rehabilitation stints; Medicaid covers longer-term stays for poor people.

Nursing homes have long had a financial incentive to evict Medicaid patients in favor of those who pay through private insurance or Medicare, which reimburses nursing homes at a much higher rate than Medicaid. More than 10,000 residents and their families complained to watchdogs about being discharged in 2018, the most recent year for which data are available.

The pandemic has intensified the situation.

With nursing homes not allowing visitors, there is less outside scrutiny of their practices. Fifteen state-funded ombudsmen said in interviews that some homes appear to be taking advantage of that void to evict vulnerable residents.



Lakeview Terrace has a history of illegally ousting residents. Andrew Cullen for The New York Times

Many nursing homes are struggling in part because one of their most profitable businesses — post-surgery rehab — has withered as states restricted hospitals from performing nonessential services.

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Treating Covid-19 patients quickly became a popular way to fill that financial void.

Last fall, the Centers for Medicare and Medicaid changed the formula for reimbursing nursing homes, making it more profitable to take in sicker patients for a short period of time. Covid-19 patients can bring in at least \$600 more a day in Medicare dollars than people with relatively mild health issues, according to nursing home executives and state officials.

"They could be big money for nursing homes," said David Grabowski, a professor of health care policy at Harvard Medical School.

It is not always about the money. Several states, including New York, New Jersey and California, urged nursing homes to accept Covid-19 patients to help relieve pressure on hospitals. Some nursing home employees worried that would endanger their vulnerable residents.

There is no national data on the number of nursing home residents who have been moved into homeless shelters, motels and other facilities. The New York Times contacted more than 80 state-funded nursing-home ombudsmen in 46 states for a tally of involuntary discharges during the pandemic at facilities they monitor. Twenty six ombudsmen, from 18 states, provided figures to The Times: a total of more than 6,400 discharges, many to homeless shelters.

"We're dealing with unsafe discharges, whether it be to a homeless shelter or to unlicensed facilities, on a daily basis, and Covid-19 has made this all more urgent," said Molly Davies, the Los Angeles ombudsman, whose office works with residents at about 400 nursing homes.

In Connecticut, a nursing-home resident was told he had less than a week to pack his things and move to a homeless shelter, according to the resident's lawyer. In Philadelphia, a nursing home planned to discharge a resident with schizophrenia to the city's office of homeless services, which was closed during the pandemic. A lawyer said she intervened to stop the eviction on the grounds that it was unsafe.

The Silvercrest Center is one of many nursing homes that have tried to evict residents during the pandemic. Hiroko Masutake/The New York Times

In New York City, the epicenter of the pandemic, nursing homes tried to discharge at least 27 residents to homeless shelters from February through May, according to data from the New York City Department of Homeless Services. Ombudsmen and city officials blocked many of the discharges, which they said were medically unsafe.

But those figures are most likely a dramatic undercount. "What we're seeing is just the tip of the iceberg," said Susan Dooha, executive director of Center for Independence of the Disabled, a nonprofit group that is the home of the Long Term Care Ombudsman Program in New York City.

Traditionally, ombudsmen would regularly go to nursing homes. In March, though, ombudsmen — and residents' families — were required to stop visiting. Evictions followed.

"It felt opportunistic, where some homes were basically seizing the moment when everyone is looking the other way to move people out," said Laurie Facciarossa Brewer, a long-term care ombudsman in New Jersey.

Nursing homes are allowed to evict residents if they aren't able to pay for their care, are endangering others in the facility or have sufficiently recovered. Under federal law, before discharging patients against their will, nursing homes are required to give formal notice to the resident and to the ombudsman's office. They must also find a safe alternative location for the resident to go, whether that is an assisted living facility, an apartment or, in rare circumstances, a homeless shelter.

But some homes have figured out a workaround: They pressure residents to leave. Many residents assume they have no choice, and the nursing homes often do not report them to ombudsmen.

That is what David Mellor said happened to him. Mr. Mellor, 54, was recovering from spinal surgery that left him numb from the neck down at a nursing home in Fremont, Calif. In April, Mr. Mellor said, the staff at the Windsor Park Care Center, an 85-bed facility, told him that he had to go to a hotel to clear the way for coronavirus patients. Mr. Mellor, who had been trying to arrange long-term housing, felt he had no choice and agreed to leave.

"I saw what was going on," Mr. Mellor said. "They were forcing people out." At the Radisson Hotel in Oakland, which was being used to house the homeless, Mr. Mellor said there was no one to help him learn to walk again or to assist him with the medications he takes to control his blood sugar and pain.

A spokesman for the Windsor Park Care Center declined to comment. It is part of a chain owned by Lee Samson, a major fund-raiser for President Trump. "Whatever my political affiliation, Windsor's commitment to protecting its residents will never be compromised," Mr. Samson said.

Nursing home evictions can be disruptive and dangerous during normal times — and even more so during a pandemic that preys on the elderly and those with underlying medical conditions.

In March, seven groups that represent nursing home residents wrote to New York's health department, urging it to stop nursing homes from evicting residents because they are "particularly vulnerable to the Covid-19 virus." Such discharges, especially to homeless shelters, they wrote, "pose particular public health risks, due to the close living quarters in shelters." The letter also warned that sending patients from nursing homes — hotbeds of the coronavirus — into the community could hasten the spread of the disease.

Advocates for nursing home residents have also urged California's health department to halt evictions.

While at least four states have restricted nursing homes from evicting patients during the pandemic, New York and California have not. Some companies appear to be taking advantage.

In California, Rockport Healthcare Services, which manages the state's largest chain of for-profit nursing homes, has repeatedly been cited by state regulators for illegal evictions.

Frequently Asked Questions and Advice

Updated June 16, 2020

- **I've heard about a treatment called dexamethasone. Does it work?**

The steroid, dexamethasone, is the first treatment shown to reduce mortality in severely ill patients, according to scientists in Britain. The drug appears to reduce inflammation caused by the immune system, protecting the tissues. In the study, dexamethasone reduced deaths of patients on ventilators by one-third, and deaths of patients on oxygen by one-fifth.

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On March 31, with Covid-19 cases soaring, a Rockport executive wrote in an email to colleagues that they should begin “discharge planning immediately,” noting that any discharges should be done safely.

Dr. Michael Wasserman, who was the chief executive of Rockport until 2018, said that was code to kick out the least-lucrative residents. “You are looking to replace the poorest, least profitable patients with the highest paying ones,” said Dr. Wasserman, who resigned after clashing with the chain’s owner.

This spring, Los Angeles County designated three of Rockport’s nursing homes as preferred destinations for Covid-19 patients. Since then, one of them has tried unsuccessfully to evict at least two residents against their will, according to a lawyer who was contacted by the residents’ families.

David Silver, the chief executive of Rockport, said the company was trying to be a good partner to the state by making room for an expected surge of Covid-19 patients. “This has absolutely nothing to do with money,” he said. He declined to comment on individual residents, citing confidentiality.

In New York City, the Silvercrest Center for Nursing and Rehabilitation in Queens tried to evict more than 20 residents at one point in March, according to residents and elder care lawyers. Employees at Silvercrest — including the director of social services — told residents or family members that the discharges were necessary to free beds for Covid-19 patients.

Abraham Hightower in the window of his room at the Silvercrest Center. He said the home has tried to evict him three times. Hiroko Masuike/The New York Times

Abraham Hightower, a 57-year-old man on Medicaid who suffers from kidney problems and high blood pressure, arrived at Silvercrest in January. Since then, the home has tried to evict him three times.

In February, Silvercrest tried to send him to a Best Western hotel that New York City uses as a homeless shelter, according to Mr. Hightower and his lawyer. He appealed and an administrative judge determined that such a facility was not appropriate given his health needs.

Mr. Hightower said he was told by Silvercrest employees that they were evicting residents to make way for Covid-19 patients. In March, he received another discharge notice, this time sending him to a homeless shelter in Manhattan, according to records reviewed by The Times. When Mr. Hightower appealed, Silvercrest backed down.

This month, Silvercrest issued the third eviction notice. Mr. Hightower's appeal is pending.

"They just want to get rid of me," he said.

Michael Tretola, the president of Silvercrest, declined to comment on Mr. Hightower's case or to say how many residents have been evicted. "The health and safety of every patient under our care is always our first concern," he said.

Lakeview Terrace in Los Angeles, which evicted the 88-year-old Mr. Kendrick, has a history of illegally ousting residents. In February 2019, the Los Angeles city attorney, Mike Feuer, reached a \$600,000 settlement with the nursing home to resolve accusations that it had illegally evicted mentally ill and homeless residents. As part of that settlement, in which Lakeview denied wrongdoing, prosecutors appointed someone to monitor the facility. As the coronavirus intensified in March, the monitor had to stop visiting.

Around this time, said three Lakeview employees, who weren't authorized to speak publicly, their superiors began encouraging them to find ways to discharge residents to make room for coronavirus patients.

On April 6, the staff moved Mr. Kendrick to an unlicensed boardinghouse in Van Nuys, Calif., about 20 miles away.

The next day, the police called Mr. Kendrick's nephew, Darryl Kennedy. They had found his uncle, who had wandered away from the boardinghouse, Mr. Kennedy said.

"They just dumped him like trash," Mr. Kennedy said.

David Weaver, the administrator of Lakeview Terrace, wouldn't say why Mr. Kendrick was evicted, citing confidentiality, but he said all of the nursing home's discharges were "clinically appropriate."

Mr. Weaver said that while Lakeview — which has space for 99 patients — has discharged or transferred 16 residents since March, it had not done so to make room for coronavirus patients and in fact had not knowingly admitted any.

After the police found Mr. Kendrick, Mr. Kennedy agreed to let his uncle stay with him, even though he could not provide the level of supervision that Mr. Kendrick would have received at Lakeview.

About a month later, Mr. Kennedy woke up at 3 a.m. to find Mr. Kendrick standing over him with a steak knife. His uncle stabbed him in the back and the head. Mr. Kennedy called the police. He needed 30 stitches.

Mr. Kendrick turned 89 on May 6. He spent his birthday at the Los Angeles County jail, about four miles from Lakeview Terrace.